

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

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11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 January 12, 2022

17 10:06 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Amended Agenda for January 12, 2022 Hearing filed
2 by Eli J. Vonnegut on behalf of Purdue Pharma L.P.
3 (ECF #4280)

4
5 HEARING re Notice of Hearing Regarding Late Claim Motion
6 [Brittany N. Johnson] (related document(s)4156) (ECF #4165)
7 Motion to File Proof of Claim After Claims Bar Date filed by
8 Brittany N. Johnson (ECF #4156)

9
10 HEARING re Notice of Hearing Regarding Late Claim Motion
11 [Shannie Jenkins] (related document(s)4219) (ECF #4220)

12
13 HEARING re Motion to File Proof of Claim After Claims Bar
14 Date filed by Shannie Jenkins (ECF #4219)

15
16 HEARING re Notice of Hearing regarding Motion to Allow Filed
17 by Personal Injury Claimant (related document(s)4030) filed
18 by James I. McClammy on behalf of Purdue Pharma L.P.
19 (ECF #4045)

20
21 HEARING re Objection to Motion / Debtors' Objection to
22 Personal Injury Claimant's Motion to Allow (related
23 document(s)4030) filed by James I. McClammy on behalf of
24 Purdue Pharma L.P. (ECF #4270)

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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7

8 BY: JACQUELYN KNUDSON (TELEPHONICALLY)

9

10 JANET LEE OSTERLOH, Pro Se

11 SHANNIE JENKINS, Pro Se

12

13 ALSO PRESENT TELEPHONICALLY:

14

15 JILL S. ABRAMS

16 ROXANA ALEALI

17 MICHAEL ATKINSON

18 JASMINE BALL

19 BROOKS BARKER

20 KATHRYN BENEDICT

21 DAVID E. BLABEY

22 SARA BRAUNER

23 DYLAN CONSLA

24 MARIO D'ANGELO

25 KEVIN DAVIS

1 JESSE DELACONTE
2 MARIA ECKE
3 KENNETH H. ECKSTEIN
4 BRIAN EDMUNDS
5 BERNARD ARDAVAN ESKANDARI
6 LAWRENCE FOGELMAN
7 CAROLINE GANGE
8 MAGALI GIDDENS
9 MARSHALL SCOTT HUEBNER
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12 PAUL KENAN SCHWARTZBERG
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15 LAURA SMITH
16 KATE SOMERS
17 ETHAN STERN
18 ERIC STRODOLA
19 JACQUELYN SWANNER
20 MARC JOSEPH TOBAK
21 ESTHER TOWNES
22 ALLEN JOSEPH UNDERWOOD
23 GERARD UZZI
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1 IRVE GOLDMAN
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6 TAYLOR HARRISON
7 BRITTANY NICHOLE JOHNSON-STAVIG
8 NICHOLAS PREY
9 VINCE SULLIVAN
10 KATIE M. WHITE

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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning. This is Judge
3 Drain. We are here in In re Purdue Pharma L.P., et al. The
4 matters on the calendar today are being heard remotely,
5 primarily by Zoom unless someone doesn't have access to a
6 screen, in which case they are appearing by phone.

7 I have the amended agenda for today's hearings and
8 I will go down that agenda in order. I will note that the
9 agenda was amended to reflect that yesterday I entered an
10 order on a matter that had been on the agenda, which was a
11 motion by Maria Ecke for immediate payment of her claims in
12 these cases and for disqualification. So that is not being
13 heard today since I've already ruled on it.

14 So, again, I'll go down the calendar in order.
15 The first two matters on the calendar as I understand it are
16 uncontested. I'll take them in order.

17 First, in re Johnson, Brittany Johnson. All
18 right, I'm not sure Ms. Johnson is on. But the Debtors have
19 not filed an objection to the motion, which is to allow her
20 claim to be filed late, that is after the bar date in these
21 cases. I think I have counsel for the Debtors on.

22 Can you just explain to me the process by which
23 you reach that determination, i.e. not to object to the
24 motion? This is one of probably now about 18 or 19 of these
25 types of motions. Most of them have been unopposed because

1 various valid reasons were given as to why the claim was
2 filed late. The ones that have been opposed and that I
3 denied didn't set forth any such reasons.

4 MS. KNUDSON: Yes, Your Honor. Good morning. For
5 the record, Jaqueline KNUDSON of Davis Polk & Wardwell. Can
6 I be heard clearly?

7 THE COURT: Yes. Yeah.

8 MS. KNUDSON: Thank you, Your Honor. So just very
9 briefly. After review and consultation with the Ad Hoc
10 Group of Individual Victims as well as the Creditors'
11 Committee and based on my review of the individualized
12 assertions in the motion, the Debtors believe that there is
13 at least a colorable basis for granting the requested
14 extension.

15 With respect to Ms. Johnson, she asserts that she
16 has been dealing with debilitating PTSD since the death of
17 her fiancée and that as a result, she shut down any
18 correspondence or anything related to Purdue or opioid
19 related, which in turn caused her delay.

20 Although acknowledging that the excusable neglect
21 standard is a fairly high bar, again, after consulting with
22 the Ad Hoc Group of Individual Victims and the Creditors'
23 Committee, we believe that it arguably rises to the level of
24 excusable neglect. Accordingly, the Debtors would request
25 that the proposed order granting the late claim motion at

1 Docket 4268, which is consistent with prior orders submitted
2 for late claim motions, be entered.

3 THE COURT: Okay.

4 MS. KNUDSON: I'm happy to answer any questions
5 you may have.

6 THE COURT: No, that's fine. I appreciate the
7 extra information.

8 So I will grant the motion, which is unopposed,
9 and I will not second-guess the creditors' and the Debtor's
10 analysis of it. I've read the motion and I believe in light
11 of the record before me, including the lack of objections,
12 the Claimant has satisfied the test under Rule 9006 and the
13 Pioneer case. So you can email that order to chambers.

14 MS. KNUDSON: Thank you, Your Honor. We will do
15 that.

16 THE COURT: Okay. The next matter on the calendar
17 is a motion by Shannie -- I hope I'm pronouncing that right
18 -- maybe it's Shannie -- Jenkins for leave to --

19 MS. JENKINS: That is correct.

20 THE COURT: -- for leave to file a late claim.
21 This is also unopposed. And I have reviewed the motion.
22 Let me -- and I see you there, Ms. Jenkins. Good morning.

23 MS. JENKINS: Good morning.

24 THE COURT: I see -- I have reviewed the motion,
25 and I appreciate you've been dealing with your grandson, and

1 the circumstances are obviously quite serious.

2 Let me just ask you, Ms. KNUDSON, did you go
3 through the same process of discussing this motion with the
4 Ad Hoc Group of Personal Injury Claimants and the Committee?

5 MS. KNUDSON: Yes, Your Honor. We consulted with
6 both the Ad Hoc Group of Individual Victims as well as the
7 Creditors' Committee, and they agreed that the motion should
8 be granted.

9 THE COURT: Okay, all right. Given what you just
10 told me, given that the motion is unopposed, and given my
11 review of the motion, I will grant it under the
12 circumstances. I think Ms. Jenkins has satisfied Rule 9006
13 and Pioneer's excusable neglect standard.

14 So, Ms. Knudson, you can email the order granting
15 the motion to chambers.

16 MS. KNUDSON: Yes, Your Honor, thank you.

17 THE COURT: Okay, thank you.

18 MS. JENKINS: And I thank you, Your Honor.

19 THE COURT: Okay, very well. All right.

20 And then the last matter on the calendar is a
21 motion that was actually filed anonymously on the docket for
22 allowance of a timely-filed personal injury claim. And it
23 has been objected to by the Debtors. I don't know whether
24 the Claimant is prepared to identify himself or herself on
25 the record and argue in support of the motion. Let me ask

1 that question first.

2 MS. OSTERLOH: Hi, I am here, Your Honor.

3 THE COURT: Okay. And I see you there, ma'am. So
4 it's Janet Osterloh, O-s-t-e-r-l-o-h?

5 MS. OSTERLOH: Correct.

6 THE COURT: Okay, very well. Thank you. And this
7 is -- Ms. Osterloh, I appreciate you representing yourself
8 here, that you are pro se. And I've taken that into account
9 in considering this motion.

10 It's somewhat of an unusual motion in that it asks
11 for allowance of the claim, but also recognizes I believe
12 that the Claimant, Ms. Osterloh, believes that under
13 applicable state law, which would govern the claim, the
14 claim is time-barred; that is that it arose at a time where
15 the applicable statute of limitations would have run before
16 the assertion of the claim. So even though the statute of
17 limitations is normally a defense to a claim, this motion
18 seeks to put that defense front and center and challenge it.
19 And I believe it challenges it on two grounds. One is that
20 it violates --

21 MS. OSTERLOH: My constitutional rights.

22 THE COURT: The due process clause under the
23 Fourteenth Amendment of the U.S. Constitution. And
24 secondly, violates the Wisconsin State Constitution under
25 Article 1, Section 9 of the Wisconsin Constitution.

1 Secondly, it's asserted that Ms. Osterloh seeks,
2 "to rule in my favor for equitable tolling" and to waive
3 Section 2255, statute of limitations, quote, due to the
4 extraordinary circumstances" of the State of Wisconsin's
5 governmental interference under the statute of limitations
6 that's cited, hence prohibiting the Claimant from filing a
7 lawsuit against the entities responsible.

8 So I hope I have summarized that correctly, Ms.
9 Osterloh. Is that right? Are those the two grounds that
10 you are seeking the ruling here?

11 MS. OSTERLOH: Yes. One, that it violates my
12 constitutional rights, not only at the federal scale, but
13 also the State of Wisconsin.

14 I did file my claim in a timely manner with
15 evidence, documents, everything else. And although this
16 statute affects Wisconsin residents, I don't believe that it
17 should affect what's going on in New York, basically.

18 What else can I say? I wrote this letter to you,
19 Judge Drain, to explain to you why I hadn't taken action
20 sooner than when claims were requested to be filed. Because
21 of the statute, I did check into lawsuits, things like that
22 with local attorneys here, and I have been blocked ever
23 since the beginning, ever since my dad passed away in 2011.
24 So that's why I wrote the letter to you. And which it moved
25 me so much that I decided to make it a motion. I am very

1 passionate about what happened to my father. That's why I
2 am here. I am the executor of his estate. And he was never
3 able to fight for himself because of his addition to
4 opioids. Luckily, I am not addicted to opioids and never
5 was. So I am here to give him a voice now that he can no
6 longer speak for himself.

7 THE COURT: Right. Okay. Thank you. And let me
8 just make sure the record is clear on this. When you say
9 you filed the claim timely, you did file it in the
10 bankruptcy case before the bar date.

11 MS. OSTERLOH: Yes, I did.

12 THE COURT: But the issue is whether the claim
13 itself can be allowed under applicable law, which would be
14 the law of Wisconsin. And that's where the statute of
15 limitations comes in.

16 In other words, there really were two deadlines
17 here. There was the deadline to assert in a way that would
18 satisfy the Wisconsin statute of limitations, the claim, and
19 then there's the deadline that the bankruptcy law imposes,
20 which was the bar date. And we are focusing on that first
21 point.

22 MS. OSTERLOH: Correct.

23 THE COURT: I have read the Debtor's objection,
24 and I'll note a couple of -- really three sort of
25 gatekeeping issues that I have with this, Ms. Osterloh.

1 The first is that your motion asks that I find a
2 statute of the Wisconsin Legislature unconstitutional,
3 either under the Wisconsin Constitution or the U.S.
4 Constitution. I don't think you served the Attorney General
5 of Wisconsin, right, on that. And I think you probably
6 needed to.

7 Secondly, in this case, these Chapter 11 cases
8 that is, there have been a huge number of claims filed just
9 of personal injury claims. It's well over 100,000 claims.
10 And the claims allowance process, the claims review process
11 hasn't started.

12 MS. OSTERLOH: Correct.

13 THE COURT: Instead, the parties focused on a plan
14 that would allocate value to the different types of
15 claimants that have asserted claims in these cases, which
16 include people like yourself that have asserted claims
17 either on behalf of an estate or someone who is asserting
18 them on behalf of themselves for personal injury or other
19 claims stemming from --

20 MS. OSTERLOH: Right.

21 THE COURT: -- a person's use of the Debtor's
22 products.

23 Then there's a huge number of claims asserted by
24 states and other governmental entities, and then also other
25 private claimants for economic loss. And because of the

1 great number of those claims and the great dollar amount of
2 those claims, the parties in the cases focused on a plan
3 that would allocate the value in the estates among the
4 claimants. And having determined that allocation, the plan
5 also set up a mechanism for a streamlined way to consider
6 the allowance of personal injury claims. And I'm using that
7 term broadly, but I think you understand what I mean.
8 Claims like yours.

9 MS. OSTERLOH: I do understand. I don't mean to
10 interrupt you, Your Honor, but the objection was to my
11 original motion to have you rule on my paper as far as
12 equitable tolling and things like that.

13 THE COURT: No, I understand. But what I'm
14 reluctant to get into at this point in these cases is the
15 individual merits of individual claims. And that's because
16 it really isn't -- it isn't efficient and it doesn't lead to
17 any immediate result.

18 MS. OSTERLOH: Correct.

19 THE COURT: The timely filing of your claim in the
20 bankruptcy case crystallized whatever rights you have. They
21 are preserved.

22 MS. OSTERLOH: Okay.

23 THE COURT: And there's not going to be any
24 immediate payout because of a determination of your claim at
25 this point.

1 MS. OSTERLOH: No, I understand that, Your Honor.
2 I don't mean to disrespect or interrupt. I understand that,
3 and I understand that this is moving into arbitration from
4 what I understand. So it's not that I want payment
5 immediately --

6 THE COURT: I know you don't. But what I'm saying
7 is I don't want to open the floodgates to a lot of people
8 like yourself making motions to have their claims allowed.
9 It is possible -- in fact, it's conceivable -- that if the
10 Debtors are unable to confirm a plan like the plan that has
11 been filed, there would be no recovery by personal injury
12 claimants, in which case, litigating these issues now is a
13 terrible waste of money and time because it would be all for
14 nothing.

15 On the other hand, it's I hope much more
16 conceivable that a plan will be confirmed that sets aside a
17 large amount of money in the aggregate for claims like yours
18 with a streamlined procedure that's much less expensive to
19 make payouts so that the cost of considering the allowance
20 of the claims is reduced.

21 And so I have a serious issue as to whether I
22 should be even hearing this motion at this time. Because I
23 don't want to open the gates to doing this for a lot of
24 other people, too.

25 And related to that, it's a subset of that point,

1 which is you've raised the specific issues that I've stated,
2 i.e. the constitutionality of the statute of limitations and
3 whether there is any equitable tolling of it.

4 MS. OSTERLOH: Correct.

5 THE COURT: But you've asked for the allowance of
6 the claim. And the claim -- I don't know what the amount is
7 for. But I don't know if there are any other defenses to
8 it. I don't know whether there's any defenses to the
9 amount.

10 So normally when courts consider a request for
11 relief, they don't do it piecemeal. They do it all at once.
12 So all the issues are dealt with, which would include not
13 only the statute of limitations issue, but also any other
14 defenses that the debtor's estates, which are really the
15 creditors, the other creditors who are competing with you on
16 this pie that -- you know, the available assets to pay the
17 creditors would have.

18 So, you know, I don't know what the amount of the
19 claim is for, for example. Can you tell me that?

20 MS. OSTERLOH: I would rather not reveal that,
21 knowing that the motion was to be known as confidential.

22 THE COURT: All right. But what I'm saying is,
23 you know, if it was for -- well, Ms. Ecke, who I ruled on
24 yesterday, asserted a claim for \$242 million. Obviously the
25 other creditors are going to object to that amount, even if

1 they ultimately believe that the claim itself should be
2 allowed in some amount. So if your claim is like that or,
3 you know, some very large amount, that's an issue. So I am
4 really hesitant to rule on this for that reason.

5 Lastly -- lastly -- and I'll say this finally too
6 besides the two procedural issues that I just raised. The
7 issue of the constitutionality of a statute under either --

8 MS. OSTERLOH: Yes.

9 THE COURT: -- the U.S. Constitution or a state
10 constitution is one that can't just be raised in federal
11 court by saying that the statute is unconstitutional.

12 MS. OSTERLOH: I understand.

13 THE COURT: A reason has to be given for it.

14 MS. OSTERLOH: Right.

15 THE COURT: And this motion doesn't really give a
16 reason. It just says it's unconstitutional. And I can tell
17 you that both at the federal level interpreting the
18 Fourteenth Amendment and at the State of Wisconsin level,
19 interpreting with the Wisconsin Constitution, the same
20 provision that you have cited, and the Fourteenth Amendment,
21 the highest court, the Supreme Court of the U.S. and the
22 Wisconsin Supreme Court, have been very loathe to find a
23 statute of limitations unconstitutional.

24 In a case called Block v. North Dakota, 461 U.S.
25 273 --

1 MS. OSTERLOH: Yes.

2 THE COURT: -- the U.S. Supreme Court said a
3 constitutional claim, even if the underlying claim is one
4 for the violation of the U.S. Constitution, can become time-
5 barred by a statute of limitations, just as any other claim
6 can. That's at Page 292 of that decision, which was from
7 that case. And that's been reiterated by the Supreme Court
8 in United States v. Clintwood Elkhorn Mining Co., 553 U.S.
9 1, 8 (2008).

10 And again, I don't have -- you haven't really
11 given me a reason why this particular statute of limitations
12 violates the Fourteenth Amendment. But even if it's
13 asserted that your underlying right -- which it's possible
14 is a constitutional right to pursue the claim -- the Supreme
15 Court has said the Fourteenth Amendment would -- claims
16 under the due process clause themselves can be time-barred.

17 And then the Wisconsin Supreme Court considered a
18 statute of limitations on medical malpractice in Aicher v.
19 Wisconsin Patients Compensation Fund, 237 Wis. 2d 99, 613
20 N.W.2d 849, Supreme Court of Wisconsin, 2000, and upheld
21 that statute of limitations over an argument that it was
22 unconstitutional under both the Wisconsin Constitution and
23 the U.S. Constitution. And it said in doing that, that
24 statutes are presumptively constitutional. The court
25 indulges every presumption to sustain the law if at all

1 possible. And if any doubt exists about a statute's
2 constitutionality, we must resolve that doubt in favor of
3 constitutionality. That's at Page 111.

4 And it then went through the statute of
5 limitations there at issue, which was not a basic statute of
6 limitations, which says, you know, you have three years to
7 bring a lawsuit. The provision they were focusing on was a
8 separate provision of the statute, which said that your time
9 to bring the lawsuit if you didn't know about it, a so-
10 called statute of repose, was also limited by a somewhat
11 longer statute, but not that long.

12 MS. OSTERLOH: Right.

13 THE COURT: And it was asserted by the plaintiff
14 that they didn't know about -- they still didn't know about
15 it by the time that statute ran. And even there, the Court
16 held that applying the rational basis test that they
17 outlined, that statute was constitutional under the Wisconsin
18 Constitution. It's a five-part test. It requires a fairly
19 detailed analysis, but with the presumption that I noted
20 earlier. And it similarly considered whether that statute
21 was unconstitutional under the Fourteenth Amendment, and
22 determined that it wasn't. I'm sorry, that it was
23 constitutional, that it wasn't unconstitutional.

24 So -- but in doing so, it had to analyze the facts
25 really carefully. And your motion doesn't give me those

1 facts. It just basically says it's unconstitutional under
2 Wisconsin and U.S. Constitution. And given my other
3 reservations about hearing this and not having those facts -
4 - in fact, I'm not even sure the statutes you cite is the
5 applicable statute of limitations, because it appears to
6 apply to medical malpractice actions. It may be that
7 instead the wrongful death statute in Wisconsin is
8 applicable, which also has a three-year statute of
9 limitations. But, again, I just don't have the facts to
10 make this determination, even if it was really appropriate
11 to do so at this time in these cases.

12 And similarly, I don't have facts as to tolling,
13 either, equitable tolling, except that you've said that it
14 was tolled because of the statute of limitations. But
15 that's not really a basis for equitable tolling.

16 Generally when equitable tolling exists, it's
17 where a potential defendant, in this case the Debtors, keep
18 you in the dark about whether your claim exists, or they
19 make you a promise that it doesn't matter that the clock is
20 running, you know, you have plenty of time, those sorts of
21 things. But that's not asserted.

22 So my inclination here is not to decide this at
23 this time. I have told you why I think if I were to decide
24 it, you have an uphill fight based on the cases I've cited.
25 But I don't really have the facts to finally rule on that,

1 and I don't think it's -- I don't want to set the process
2 precedent in these cases to start deciding pieces of the
3 puzzle of individual claims, because it's just -- it's too
4 early to do that.

5 MS. OSTERLOH: I understand.

6 THE COURT: Okay. And I don't fault you for
7 bringing the motion. I mean, I want to be clear about that.
8 But I'm trying to explain to you why I'm not inclined to
9 grant it at this point.

10 If a plan like the plan that was on the table that
11 I confirmed and that was reversed is confirmed in these
12 cases, there will be a process for you to submit -- to have
13 your claim be considered.

14 MS. OSTERLOH: Okay.

15 THE COURT: And I'm sure these points will be
16 addressed during that process. But it will be a lot faster
17 and it will be comprehensive as opposed to piecemeal here.
18 And, again, I don't really have the record before me today
19 to decide this request. So my inclination is to adjourn
20 this without date, and it will be decided at the time when
21 claims generally are being considered for allowance in these
22 cases.

23 MS. OSTERLOH: I understand.

24 THE COURT: Okay. All right. So I will ask our
25 clerk's office just to make a notation on the docket beside

1 your motion to say that.

2 MS. OSTERLOH: Okay.

3 THE COURT: So that when it comes up again, people
4 can go back and see that that's how I dealt with this.

5 MS. OSTERLOH: Okay. Will I be receiving some
6 kind of notice from the Court pertaining to --

7 THE COURT: Well, that's a good question. I mean,
8 you have a claim on file.

9 MS. OSTERLOH: Yes.

10 THE COURT: Again, if a plan like the plan that I
11 confirmed and that was reversed actually gets confirmed, you
12 will get a notice under those claims procedures --

13 MS. OSTERLOH: Okay.

14 THE COURT: -- as to when, you know -- there will
15 be forms sent to you. You'll have a right to choose a fast
16 track allowance process or a more slow process. If that
17 type of plan isn't confirmed, you will get a notice at some
18 point. It could be anything, such as a Chapter 7 trustee
19 sending you a notice saying I object to your claim. Or it
20 could be a different plan with a plan administrator sending
21 you a notice. But, yeah, your claim, because it's filed and
22 not objected to under the bankruptcy rules, is presumptively
23 valid.

24 MS. OSTERLOH: Okay.

25 THE COURT: The Debtor or the Debtor's successor

1 under a plan or whatever would have to object to the claim,
2 and you would have to get the notice of that objection.

3 MS. OSTERLOH: Oh, I'm sure they will.

4 THE COURT: Well, probably so given the statute of
5 limitations issue. Okay. All right.

6 Very well, that concludes today's agenda. So I'm
7 going to sign off at this point. Thank you.

8 MS. OSTERLOH: Thank you, Judge.

9 THE COURT: Okay.

10 (Whereupon these proceedings were concluded at 0
11 10:38 AM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: January 13, 2022